



## CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 29, 2022

FROM: DIRECTOR GINO BETTS  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0184

### Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained - Inconclusive
# 2	8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force	Not Sustained - Training Referral
# 3	5.001 - Standards and Duties 5.001-POL 10. Employees Will Strive to be Professional	Not Sustained - Training Referral
# 4	5.001 - Standards and Duties 5.001-POL 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained - Unfounded

*This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.*

### EXECUTIVE SUMMARY:

Named Employee (NE#1) allegedly failed to deescalate an encounter, where NE#1 directed profanity and unjustified force toward a subject.

### ADMINISTRATIVE NOTE:

On July 19, 2022, given NE#1’s alleged criminal act, OPA referred this matter to SPD for criminal investigation. See Agreement By and Between The City of Seattle and Seattle Police Officers’ Guild (3.7) (Effective through December 31, 2020). SPD’s assigned criminal investigator drafted a memo (dated September 8, 2022) outlining his review. SPD found “no possible criminal charges” related to NE#1’s actions. SPD concluded NE#1 acted in self-defense.

### SUMMARY OF INVESTIGATION:

On June 15, 2022, OPA received a Blue Team complaint from a SPD lieutenant, the Complainant. OPA opened an investigation. During its investigation, OPA reviewed the complaint, Computer-Aided Dispatch (CAD) call report, an incident/general offense (GO) report, and Body Worn Video (BWV). OPA also interviewed NE#1 and witness officers. Evidence summaries are below:<sup>1</sup>

<sup>1</sup> Evidence is summarized as presented to OPA. OPA’s assessment of the evidence is captured in the ‘Analysis and Conclusions’ section.



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*OPA complaint*

NE#1 and other officers responded “to a fight disturbance.” Officers aided an injured<sup>2</sup> community member and awaited the Seattle Fire Department’s (SFD) arrival. During that period, another community member (the Subject) repeatedly engaged officers. The Subject appeared “highly intoxicated.” NE#1 and other officers repeatedly asked the Subject to disperse. Instead, the Subject stood within inches of Witness Officer #1 (WO#1). The Subject walked away, but soon returned. He asked NE#1 to talk. NE#1 explained the officers were busy “handling the scene,” and again asked the Subject to leave. Witness Officer #2 (WO#2) offered to speak with the Subject. However, the Subject walked off and kicked over a rental scooter. The Subject reapproached NE#1 and asked to talk. WO#2 again offered to speak with him. The Subject, “much taller, and physically larger,” turned toward WO#2 in an agitated and animated manner. WO#2 responded, “Don’t come up towards me like that.” WO#2 told the Subject he was free to leave and ordered him not to reapproach her. The Subject put his hands behind his back and urged officers to arrest him. Witness Officer #3 (WO#3) responded, “We don’t want to arrest you man, all you gotta do is go home.” NE#1 again ordered the Subject to leave. Instead, the Subject sat on nearby steps and stated, “Fuck y’all, fuck y’all.” SFD arrived. The Subject reapproached NE#1. NE#1 responded, “just go home bud.” NE#1 extended his palm to push the Subject away. The Subject grabbed NE#1’s arm. NE#1 pushed the Subject toward a utility box and stated “Get the fuck out of here right fucking now. Do you fucking understand?” NE#1 pushed the Subject to the ground. The Subject stood and reapproached NE#1. NE#1 stated, “I’m going to fucking knock you on your ass.” The Subject “again got within inches of (NE#1),” held his hands up and stated, “bet, bet, bet, bet.” NE#1 raised his fist and ordered the Subject to leave. The Subject “seemed to be willing to calm down, but he then approached again shoving his middle finger in (NE#1’s) face.” NE#1 pushed the Subject’s finger away. The Subject grabbed NE#1’s arm. NE#1 punched the Subject’s face. The Subject fell and was arrested.

The OPA complaint included NE#1’s “BlueTeam statement,” outlining his communication efforts prior to using force. That statement was consistent with the lieutenant’s representations. Additionally, prior to applying force, NE#1 suspected the Subject was biased against “female Officers.” NE#1 believed the Subject attempted to intimidate them “by intruding on their space trying to tower over them and treating them in a disrespectful manner.” NE#1 noted “a marked difference in the tone and tenor of his speech pattern and body language” between the Subject’s interactions with male versus female officers. NE#1 explained he declined speaking with the Subject, because he did not want to undermine the primary officer.

Additional comments noted, following the Subject’s arrest, a sergeant screened NE#1’s use of force. The Subject was admittedly highly intoxicated. He had no recollection of using force against officers or officers using force against him. However, the Subject claimed he was the victim of an unrelated assault earlier that day. Accordingly, the chain-of-command had no issue with NE#1’s use of force or de-escalation efforts. SPD concluded NE#1 “would be receptive to counseling for how he handled this incident,” which would be documented in SPD’s performance appraisal system (PAS).

*CAD call report*

CAD systems allow 911 call-takers to identify patrol officers’ status and location to effectively coordinate responses. On June 2, 2022 at 12:20 AM, someone called 911 to report a fight.<sup>3</sup> Officers responded. WO#2 reported a male on scene with “a laceration to back of head.” At 12:39 AM, NE#1 requested a sergeant to screen his use of force. At 1:33 AM, SPD Force Investigative Team (FIT) was notified about NE#1’s use of force.

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<sup>2</sup> The injured party had “a severe head wound.”

<sup>3</sup> The fight reportedly involved about eleven people.



*GO/Incident report<sup>4</sup>*

On June 2, 2022, officers responded to a fight at a bar. Many people were involved in the fight, but there was no identifiable victim. Officer awaited SFD for an injured patron. Bar staff wanted the Subject, who was highly intoxicated, to leave their property. Officers told the Subject he was free to leave, but he “continually approached officers and got within a few inches of their faces while yelling at them with his harms moving around up near his face.” The Subject refused to leave despite several orders. The Subject kept “unsafely approaching officers and was acting aggressively while (officers) were investigating and providing aid to the other subject. He then stuck his hand that had blood on it directly in (NE#1’s) face.” NE#1 “attempted to guide (the Subject) off the property.” The Subject “aggressively approached (NE#1) with his arms up and a bladed stance. (The Subject) swung his fist at (NE#1) twice attempting to hit him. (The Subject) swung at (NE#1) a third time and punched (NE#1) in the arm.”

*NE#1’s Use of Force statement*

Officers who apply Type II<sup>5</sup> force must complete a Use of Force Report in Blue Team. See SPD Manual 8.400-TSK-8(10). NE#1 and three other uniformed officers responded to a fight involving about eleven people. NE#1 was nearby and decided to join the response because officers were outnumbered, and the location had a “reputation for overserving and violence.” NE#1 approached the scene armed with oleoresin capsicum (OC/pepper) spray. The Subject yelled at officers, who awaited SFD for an injured party. The Subject initially walked off but returned and yelled at and invaded an officer’s personal space. Prior to using force, NE#1 had probable cause to arrest the Subject for “Assault in the 3<sup>rd</sup> Degree” and “Obstructing a Law Enforcement Officer.” The Subject appeared agitated. His speech ranged from “overt anger and then a baseline elevation that was over and above everyone else.” The Subject also appeared intoxicated, where “he had slurred, thick-tongued speech with repetitive speech patterns” and “at times, unsteady balance.” The Subject persistently encroached on officers’ personal space with his hands, one of which bled, “at or very near (officers’) faces.” Several de-escalation tactics were tried, including verbal commands:

*Every verbal avenue was explored. (The Subject) was spoken to in a calm and respectful manner. He was repeatedly told that he was free to leave and, since he often pointed out he was a veteran, was thanked for his service.*

The Subject requested to speak to NE#1. That request, along with the Subject’s interactions with women officers on scene, suggested he had a gender bias. During one of the Subject’s approaches, NE#1 put his left hand on the Subject’s chest to create distance. The Subject tried to “force his way through (NE#1’s) outstretched hand and overcome (NE#1’s) muscular strength to hold him back.” Simultaneously, the Subject tried to put his right hand in NE#1’s face. NE#1 tried to “address (the Subject’s) right hand,” but he responded by “(bringing) his left hand up and into play.” NE#1 grabbed the Subject’s upper body, turned, and pushed him. NE#1 held the Subject against a “5-foot-high electrical box” and yelled “a high degree of profanity” at him. NE#1 again pushed the Subject and ordered him to leave. The Subject “took several steps and lost his balance before falling down.” The Subject got up and re-engaged NE#1 with his hands up. NE#1 extended his left arm and “loaded a punch with (his) right hand.” NE#1 hoped the “visual clue of a cocked fist” would “let (the Subject) know (NE#1) was prepared to use force.” NE#1 pushed the Subject. The Subject reapproached with a middle finger raised towards NE#1’s face. NE#1 pushed his hand. The Subject swung his right hand at NE#1 but did not connect. The Subject brought his right hand towards NE#1’s face. NE#1 positioned the

<sup>4</sup> WO#1 wrote the report.

<sup>5</sup> Type II force includes a punch with less than Type III injury. See SPD Manual 8.400-POL-1. Type III injuries include broken bones, loss of consciousness, permanent disfigurement, and other great bodily harm or incidents requiring hospital admission for the suspect. *Id.*



Subject's "right arm towards his midline." The Subject pulled away and hit NE#1 with two "rapid succession" swings. NE#1 punched the Subject's face. Utilizing distance and shielding was unfeasible. While SFD attended to the injured party, officers were unable to "leave, give ground, use barriers or shielding." Further, "Time, as a de-escalation technique, was exhaustively employed." Moreover, several warnings preceded NE#1's use of force. NE#1 described his lawful purpose for using force:

*I used force on the subject to interrupt an ongoing assault, prevent a further assault and to protect myself from injury. No other reasonable alternative to the use of Force appeared to exist to accomplish the stated goal of stopping an in-progress assault, preventing future assaults and preventing myself from becoming injured.*

NE#1 further explained punching the Subject was "the most efficient way to" overcome the assault. NE#1 had two less lethal devices: a baton and OC spray. He determined neither were suitable options under the circumstances.

#### *Use of Force screening*

Sergeant Officer #1 (SO#1) reviewed NE#1's used of force. SO#1 interviewed<sup>6</sup> the Subject at the West Precinct's intake area. SO#1 believed the Subject was "heavily intoxicated," based on the Subject's admission of intoxication, "unsteady stature," and "slurred disjointed speech." The Subject did not recall his encounter with officers but was reportedly beaten by unknown parties earlier that day.<sup>7</sup> The Subject had "pre-existing injuries" "on his body, forehead, and mouth." SO#1's BWV review concluded all officers tried de-escalation tactics, but the Subject was "fixated on continuing the confrontation with officers" and "steadily escalate(d) his behavior from verbally aggressive, to causing unacceptable officer safety concerns, to eventually assaulting an officer." A uniformed response (team tactic) from the officers to isolate the Subject from NE#1, who he was fixed on, "would have prevented the on-scene supervisor from being forced to physically engage the subject on his own." FIT screened the incident and categorized it as a Type II use of force.

#### *WO#1's statement*

*Upon arrival, the fight was over. Bar staff indicated the Subject was the aggressor. An unknown woman also stated the fight started after the Subject hit a woman. Bar staff wanted the Subject removed. The appeared "highly intoxicated" and argued with others. The Subject ignored orders to leave and repeatedly and aggressively invaded officers' personal space. The Subject stuck his bloody hand in NE#1's face. NE#1 tried to guide the Subject away from the bar, but he refused. The Subject aggressively approached NE#1 "with his arms up and a bladed stance." The Subject took two unsuccessful swings at NE#1 then punched NE#1's arm. NE#1 punched the Subject's face.*

#### *WO#2's statement*

Upon arrival, bar staff indicated the Subject caused a disturbance on the patio. They wanted him removed from the property. The Subject's forehead had two small, raised scratches. He also had a strong alcoholic odor, unsteadiness, and slurred speech. The Subject repeatedly encroached WO#2's personal space, causing WO#2 to extend her arm to create distance. While attending to an injured party, WO#2 saw the Subject repeatedly invade officers' space and ignore orders to leave. The Subject yelled and escalated his behavior. He flailed his arms and swung towards NE#1.

<sup>6</sup> That interview was video recorded.

<sup>7</sup> The Subject was uncertain whether officers were involved in the earlier attack.



The Subject tried to “land a right hook punch towards (NE#1’s) head.” NE#1 tried to block the punch. WO#2 turned away then looked back to see the Subject being handcuffed on the ground.

#### *WO#3’s statement*

WO#3’s statement was materially consistent with NE#1’s statement. Additionally, WO#3 reportedly used a “hand-check” move to create distance with the Subject.

#### *Training records*

Over the past two years, NE#1’s relevant trainings included:

- Washington State Criminal Justice Training Commission (WSCJTC) – 2021 Annual Crisis Intervention Team Online Course 12/14/2021
- SPD – 2021 Defensive Tactics and HB1310 Legal Updates 11/23/2021
- WSCJTC – 2020 Annual Crisis Intervention Team Online Course 11/17/2020

#### *NE#1’s BWV*

NE#1 arrived while the Subject engaged with other officers. The Subject stood close to and looked down on WO#2 while loudly speaking. WO#2 leaned back with her arms folded. The Subject moved his head towards WO#2, who responded by putting her left hand on his chest. The Subject yelled “You’re scared” and walked away. The Subject reemerged while WO#2 and NE#1 talked. He stood next to NE#1. NE#1 suggested the Subject seemed angry and directed him to leave. The Subject asked NE#1 to talk. NE#1 directed him to the officers handling the scene. The Subject walked away and punched a scooter, causing it to fall. The Subject reapproached NE#1 asking to talk. WO#2 offered to talk to the Subject. He approached WO#2 and stated, “I don’t give a fuck about none of that. I don’t give a fuck about none of that.” WO#2 directed him to go home. NE#1 stated, “You’re just having a problem with personal space, man.” The Subject put his hands behind his back and told officers “Grab my arms.” NE#1 stated, “No. Dude, we don’t want to arrest you. Dude, all you gotta do is go home.” The Subject approached WO#3 and repeated “Grab my arms.” WO#3 extended an arm to create distance. NE#1 restated, “Just go home. Just go home. That’s it.” The Subject directs several “fuck yous” at officers then sat on steps. He got up and reapproached the officers. NE#1 stated, “Why you trying to make more of this then it is? You keep getting close to us. Why do you keep getting close to us?” NE#1 extended his arm to create distance and stated, “We’re doing nothing but treat you with respect.” The Subject got closer to NE#1 and stated, “What did you say though? What did you say? Can you repeat it?” NE#1 created space with his left hand and ordered him to leave. The Subject raised his right hand towards NE#1’s face. NE#1 grabbed the Subject’s right arm, pushed him back, and stated, “I’m going to fucking take you to jail. Fucking knock...? Get the fuck out of here. Right fucking now.” NE#1 pushed the Subject and yelled, “Do you fucking understand? Get the fuck out.” The Subject stumbled and fell. While on the ground, the Subject turned towards NE#1 and stated, “Hey, hey, hey.” NE#1 responded, “I’m gonna fucking knock you on your ass. Get the fuck out of here.” WO#3 stood near NE#1 with a Taser in his right hand. The Subject asked NE#1, “Why you gotta act like that? Why you gotta act like that?” NE#1 answered, “You come up on me and my officers over and over again. We’re telling you to get the fuck out.” The Subject reapproached NE#1 asking to talk. NE#1 refused. The Subject replied, with his left arm raised in front of NE#1, “Alright, fuck you man.” Face-to-face with NE#1, the Subject swung his right arm and yelled, “Fuck you then.” The Subject swung his left arm with his middle finger extended towards NE#1. NE#1 punched the Subject’s face, causing him to fall. NE#1 stated, “You fucking hit me dude. Why do you think I fucking punched you?” NE#1 requested another sergeant: “I just punched a dude in the mouth. So, I need a...I need a hard stripe for a type 2.” A bystander asked NE#1, “He get ya?” NE#1 replied, “Ah, he got me a little bit, but I got him worse than he got me. So...” While explaining the encounter to SO#1, NE#1 indicated he punched the Subject after the Subject hit him: “I started feeling it hit me and I just gave him one right in the mouth, and he went down like a pile of shit.” When asked where he punched the Subject,



NE#1 stated, "Right in the mouth. Like, I came across with the right and put it right on the button. He went down like a pile of shit and then we got on top of him and he didn't move."

*WO#2's BWV*

Upon arrival, WO#2 spoke with bar staff. The Subject was captured asking an unknown party whether they were trying to be funny. WO#2 asked the Subject, "What's going on?" He replied, "They just trying to be funny" and walked away. The Subject returned and closely approached WO#2. She stated, "Don't step up on me." The Subject called the officers' orders to leave "pussy" and "lame." He leaned over WO#2 and stated, "You want me to go away cause you're...you're scared. You're scared." WO#2 created distance with her arm. The Subject left and WO#2 explained the situation to NE#1. The Subject returned and approached NE#1.<sup>8</sup>

*WO#3's BWV*

Upon WO#3's arrival, the Subject walked away from officers. The Subject returned and closely approached WO#1, who created space with her extended left arm. He approached WO#3 and stated, "Grab my arms." WO#3 created distance with an extended arm. The Subject appeared to move WO#3's arm. NE#1 ordered the Subject to go home. The Subject sat on steps and directs profanity at WO#1, WO#3, and NE#1. While WOs #1 and #3 spoke, the Subject closely approached WO#1. She extended her left arm and stated, "Do not come up to me." NE#1 pushed the Subject towards an electrical box and yelled, "Get the fuck out of here right fucking now." The Subject fell. He got up and approached NE#1, who's left arm is extended and right fist cocked. The Subject's hands were raised. WO#3 stated, "(NE#1) I'm taser." The Subject raised his left middle finger towards NE#1's face. NE#1 moved the Subject's extended arm. The Subject swung his right arm toward NE#1 and yelled, "Fuck you then." The Subject repeatedly swung both arms, possibly connecting with NE#1's extended left arm. NE#1 punched the Subject's face.

*SO#1's BWV*

SO#1 screened the incident with bar staff, witness officers, NE#1, and Community Member #1 (CM#1). CM#1 reported:

*The subject is like...I don't know...doing some sort of like hand gestures that are like pretty abrupt and pretty close to his face. And then he's like, hey man, I already kind of told you to like to carry on with your night. Ah, and I guess he wasn't having anymore. So, he like pushed him against...pushed him against the electrical box and told him like hey, take off get out of here. Ah, but I guess the other subject wasn't having it and still proceeded to kind of like, you know, say some things that were probably unsavory. Ah, and then he started like giving him the middle finger. But like very abrupt and close to his face. Ah, and the officer is still waving him away. Like the EMT is already here. Ah, everyone is kind of doing their own thing. And then umm, the officer kind of like pushes his hand out of the way. Like, to you know, signal like hey, stop that. Carry on with your night. And then he like, kind of like swipes at the officer pretty quickly. To like...you know like don't push my hand or I'm going to push your hand."*

CM#1 did not see the punch but assumed the Subject tripped over a scooter prior to his arrest. CM#1 further stated, "They definitely gave him plenty of opportunity to carry on with his night."

<sup>8</sup> The rest of the encounter is consistent with the summary of NE#1's BWV. Similarly, WO#1's BWV is consistent with WO#2's BWV summary.





*Force Review reports*

NE#1's chain-of-command was required to review his use of force. See SPD Manual 8.500-POL-2. An administrative lieutenant, watch lieutenant, and acting/captain assessed NE#1's de-escalation tactics, pre-force and tactical considerations, and use of force. All found NE#1's force justified. However, the administrative lieutenant expressed concern about NE#1's profanity use, which the watch lieutenant addressed in a counseling session.

*WO#1's OPA interview*

On September 19, 2022, OPA interviewed WO#1. She served the Department about three years. WO#1 was the primary officer responding to the bar fight. Her interview materially mirrored her Use of Force Witness Officer Statement, summarized above. Additionally, WO#1 did not think NE#1's profanity escalated the situation, where the Subject was escalated throughout the encounter and unresponsive to de-escalation tactics. She found NE#1's use of force reasonable, necessary, and proportional, and saw no other option under the circumstances: "Uh, like I said he just assaulted a police officer punched him. NE#1 punched him back. That was the appropriate and um necessary level of force in order to deal with that situation."

*WO#3's OPA interview*

On September 20, 2022, OPA interviewed WO#3. He served the Department about 14 years. WO#3 responded to the bar fight as a backing officer. His interview materially mirrored his Use of Force Witness Officer Statement, summarized above. Additionally, in response to NE#1's profanity, WO#3 stated, "sometimes you have to use a higher level of language to get them to understand." WO#3 also found NE#1's use of force reasonable, necessary, and proportional.

*NE#1's OPA interview*

On September 19, 2022, OPA interviewed NE#1. He served the Department about 19 years and spent another five years with another law enforcement agency. His interview materially mirrored his Use of Force statement. Additionally, NE#1 considered the Subject's proximity to officers an obstruction to their "safety reactionary gap," which he defined:

*Well safety reactionary gap is is a basically a consideration for police officers that you know, we are by and large reactionary, we have to respond to the set of facts and actions of others, and that by having a reactionary gap, and in this case, in the means of unprovoked or sudden assault, giving yourself time and distances of a great assistance and not finding yourself in a bad situation, you know, I've certainly been taken to the ground before and attacked by other people and it's also a nod towards the fact that we, you know, every call we go to has a gun officers.*

NE#1 believed the Subject was still in "fight mode," following the bar altercation. There was no indication of mental health crisis, only intoxication and aggression. Further, NE#1 thought the Subject's requests to speak to NE#1, rather than the women officers managing the scene, was rooted in misogyny. Speaking with the Subject alone would have "delegitimiz[e]" the "strong and capable" female officers.

**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegation #1**

**8.200 - Using Force 1. Use of Force: When Authorized**



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NE#1 allegedly used unauthorized force.

Officers' use of force must be reasonable, necessary, and proportional. SPD Policy 8.200(1). Reasonableness "is based on the totality of circumstances known by the officer at the time of the use of force and weighs the actions of the officer against the rights of the subject, in light of the circumstances surrounding the event. It must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." SPD Policy 8.050.<sup>9</sup> See *id.* Force is necessary where "no reasonably effective alternative to the use of force appeared to exist" and "the amount of force used was reasonable to effect the lawful purpose intended." *Id.* Last, proportional force reflects the totality of the circumstances, including the nature and immediacy of threats posed to officers and others. *Id.*

A. Reasonableness

Here, NE#1 used reasonable force. He responded to a bar fight at a familiar location, where officers had "significant problems." NE#1 and the three other officers were significantly outnumbered. NE#1's initial observation of the highly intoxicated Subject was him towering over and yelling at WO#2, apparently attempting to impose his physical advantage over the shorter female officer. Several civilians, including bar staff and patrons, identified the Subject as starting the fight. Officers ordered the Subject to leave several times. Instead, he repeatedly and aggressively invaded the officers' personal space. The Subject's disposition suggested to NE#1 he was still in "fight mode" following the bar altercation. After de-escalation tactics failed<sup>10</sup>, the Subject again came face-to-face with NE#1. NE#1 extended an arm to create space, but the Subject swung his right arm towards NE#1's face. NE#1 hugged then pushed the Subject. The intoxicated Subject stumbled and fell. Undeterred, the Subject got up and back in NE#1's face. Face-to-face with NE#1, the Subject swung twice, connecting with NE#1's forearm at least once. At that point, NE#1 punched the Subject's face.

i. Seriousness of the crime or suspected offense

Prior to pushing the Subject, NE#1 knew he obstructed officers from safeguarding SFD personnel and reportedly caused a bar fight.<sup>11</sup> Prior to punching the Subject, NE#1 knew he assaulted an officer (NE#1). See RCW 9A.36.031(1)(g). The Subject striking NE#1 constituted Assault in the third degree, a class C felony. *Id.* at (2).

ii. The level of threat or resistance presented by the subject

The Subject engaged in menacing and threatening behavior towards several officers. Specifically, he yelled at, cursed at, and repeatedly invaded the personal space of NE#1, WO#2, and WO#3. He also demonstrated relentless resistance by defying the officers' repeated orders to leave.

iii. Whether the subject was posing an immediate threat to officers or a danger to the community

The Subject posed an imminent threat to officers and the community, where he reportedly started a brawl by punching a woman's face, menaced responding officers, and struck NE#1.

iv. The time available to an officer to make a decision

Officers spent considerable time trying to deescalate the Subject prior to NE#1's use of force. See Named Employee #1- Allegation #2. As SPD Manual 8.050 acknowledges, "officers are often forced to make split-second decisions—in circumstances that are tense, uncertain, dynamic and rapidly evolving—about the amount of force that is necessary

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<sup>9</sup> This policy outlines several factors to consider when determining the objective reasonableness of force.

<sup>10</sup> Further discussed at Named Employee #1- Allegation #2.

<sup>11</sup> Obstructing a law enforcement officer is a gross misdemeanor. See RCW 9A.76.020.





in a particular situation.” Prior to NE#1’s push and punch, he was faced with tense, uncertain, dynamic, and rapidly evolving circumstances and left with a split-second to decide an appropriate response.

v. The availability of other resources

NE#1 was armed with a baton and OC spray but found both inappropriate under the circumstances. WO#3 also alerted NE#1 he was prepared to Tase the Subject.

vi. The training and experience of the officer

NE#1 had 23 years of law enforcement experience.

vii. Officer versus subject factors such as age, size, relative strength, skill level, injury/exhaustion and number of officers versus subjects

There were three officers (WO#1 was busy with the injured party) dealing with the Subject. NE#1 was also larger than the injured<sup>12</sup> and inebriated Subject.

Overall, the totality of the circumstances made NE#1’s uses of force objectively reasonable. While not the ideal reaction, as discussed below, a reasonable officer under the same conditions may have acted the same.

B. Necessary

Here, NE#1’s uses of force were “reasonable to effect the lawful purpose intended,” the Subject’s arrest. However, as SO#1 noted in his force review, the officers should have strategized a coordinated response to isolate the Subject from NE#1. NE#1 told OPA there was no time to coordinate a response, where officers were outnumbered and dealing with an injure party. However, NE#1 also told OPA the scene was calm other than the Subject’s disruptions. Overall, the totality of the circumstances suggests NE#1’s uses of force were reasonable but other “reasonably effective alternative(s)” were not fully explored. See SPD Manual 8.050.

C. Proportional

Here, NE#1’s uses of force largely mirrored the Subject’s force.<sup>13</sup> Prior to NE#1’s push, the Subject repeatedly demonstrated menacing behavior towards NE#1 and other officers. That included invading their space and putting his bloody hand in NE#1’s face. Prior to NE#1’s punch, the Subject’s behavior elevated to striking NE#1.

Overall, NE#1’s uses of force reflected the totality of the circumstances presented. Although the 20/20 vision of hindsight calls to question the necessity of NE#1’s use of force, there is insufficient evidence his elected response violated policy.

Accordingly, OPA recommends this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained - Inconclusive**

<sup>12</sup> The Subject was injured from the bar fight.

<sup>13</sup> OPA recognizes “Proportional force does not require officers to use the same type or amount of force as the subject.” See SPD Manual 8.050.



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**Named Employee #1 - Allegation #2**

**8.100 - De-Escalation 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics in Order to Reduce the Need for Force**

NE#1 allegedly failed to de-escalate.

De-escalation is “[t]aking action to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources are available to resolve the situation. The goal of de-escalation is to gain the voluntary compliance of subjects, when feasible, and thereby reduce or eliminate the necessity to use physical force.” SPD Manual 8.050. De-escalation techniques are “[a]ctions used by officers, when safe and feasible without compromising law-enforcement priorities, that seek to minimize the likelihood of the need to use force during an incident and increase the likelihood of gaining voluntary compliance from a subject.” *Id.* Pattern interruption is used to disrupt or alter an individual’s behavioral state or habit sequence. *Id.* It is based in Neuro Linguistic Programming and can be a successful tool in altering an individual’s mental, emotional or behavioral state. *Id.*

Here, NE#1’s threat assessment concluded the Subject posed a threat to himself and other officers. NE#1 and other officers exhaustively attempted calm and congenial orders for the Subject to leave. NE#1’s BWV captured him tell the Subject:

- “Parties over. Time to go home.”
- “All we’re doing is asking you to leave. That’s it. Because, there’s no problem to see here. We’re going to get this man his medical attention.”
- “No. Dude, we don’t want to arrest you. Dude, all you gotta do is go home.”
- “Just go home, bud.”
- “We’re doing nothing but treat you with respect. And all we told you is the show’s over.”
- “I said the show’s over. It’s time to go home.”

Repeated uses of clear instructions and verbal techniques like Listen and Explain with Equity and Dignity (LEED) failed. NE#1 abandoned those efforts, pushed the Subject, and unleashed an onslaught of expletives. The Subject reapproached. WO#3 drew his taser and alerted those present he was prepared to use it: “(NE#1), I’m Taser.” That verbal persuasion failed to deter the Subject. NE#1 told OPA time, distance, and shielding were unavailable options where officers were responsible for awaiting and safeguarding SFD. Overall, OPA found NE#1 spent significant time demonstrating patience and utilizing de-escalation tactics. However, when those efforts proved futile, NE#1 switched to profane and escalating language and behavior, particularly threatening the Subject with his fist. NE#1 told OPA raising his fist was a de-escalation tactic, where he hoped that “visual clue” would let the Subject know NE#1 was prepared to use force. However, NE#1 also told OPA he raised his fist after “perceiving that this was imminently going to turn into a physical conflict and I needed to be prepared.” Further, as previously noted, policy encourages “team approaches to de-escalation.” SPD Manual 8.100. Had the officers coordinated and strategized they may have found a way to disrupt the Subject’s pattern of space invasion and apparent fixation on NE#1.

Accordingly, OPA recommends this allegation be Not Sustained- Training Referral.

- **Training Referral:** NE#1’s chain of command should discuss OPA’s findings with NE#1. Command staff should incorporate counseling and training on relevant sections of SPD Policy 8.100-POL-1. Retraining and counseling should be documented and maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**



**Named Employee #1 - Allegation #3**

**5.001 - Standards and Duties 5.001-POL 10. Employees Will Strive to be Professional**

NE#2 was allegedly unprofessional.

SPD employees must “strive to be professional.” SPD Policy 5.001-POL-10. Further: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” *Id.*

Here, NE#1’s behavior ranged from model professionalism to profane and contempt. NE#1 told OPA his language was appropriate under the circumstances, given the Subject’s language and NE#1’s intent to “punctuate (NE#1’s) clear cut directions:”

*(The Subject) himself obviously had no problem with language and there's not a single thing that I said to him that he didn't say he said fuck multiple times. He said nigger multiple times. He said pussy multiple times. My language is not offensive to him. I know it wasn't offensive to the fire guys, because incidentally, I ran into them on a call a couple of weeks ago and they were telling me they thought I did a really good job.*

However, NE#1’s explanation falls short of justifying a uniformed supervising officer screaming profanities in public. Where NE#1 claimed to use profanity to give his orders “a more forceful and direct appearance,” OPA found no policy permitting that approach. Overall, OPA found NE#1’s profane language poorly represented the Department. Further, OPA had similar concerns about NE#1’s apparent pride from knocking the inebriated and unbalanced Subject down. Specifically, when NE#1 described the punch to SO#1 he stated:

*I just gave him one right in the mouth, and he went down like a pile of shit. Um, I don't know. I don't think he was unconscious, but he wasn't fucking moving on the ground.*

When SO#1 asked where he struck the Subject, NE#1 replied:

*Right in the mouth. Like, I came across with the right and put it right on the button. He went down like a pile of shit and then we got on top of him and he didn't move.*

Similarly, when a bystander asked whether the Subject hit NE#1, he responded:

*“Ah, he got me a little bit, but I got him worse than he got me. So...”*

Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1’s chain of command should discuss OPA’s findings with NE#1. Command staff should incorporate counseling and training on relevant sections of SPD Policy 5.001-POL-10. Retraining and counseling should be documented and maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**



**Named Employee #2 - Allegation #2**

***5.001 - Standards and Duties 5.001-POL 2. Employees Must Adhere to Laws, City Policy and Department Policy***

NE#2 allegedly violated the law and/or policy.

Employees must adhere to laws and city and department policy. SPD Policy 5.001-POL-2.

For the reasons stated above, there is insufficient evidence to prove this allegation.

Accordingly, OPA recommends this allegation be Not Sustained- Unfounded.

Recommended Finding: **Not Sustained - Unfounded**